

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIE LUXE INTERNATIONAL, LLC AND MARJORIE
GUBELMANN RAEIN,

Plaintiffs,

v.

DANIEL BENEDICT,

Defendant.

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: 08 Civ. 50237 (LAP)(GWG)
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:
:
X

AFFIDAVIT OF CHRISTOPHER ANDREWS

State of Minnesota

County of Hennepin, SS

Christopher Andrews, being first duly sworn, on his oath deposes and says:

1. I am a Computer Forensics Specialist at Kroll Ontrack, Inc. ("Kroll Ontrack"). I have been employed by Kroll Ontrack since February 5, 2007. In this position, I use numerous computer applications and tools, many of them proprietary to Kroll Ontrack, to retrieve data that has been lost or deleted. The facts stated herein are personally known to me by virtue of my capacity as a Computer Forensics Specialist with special expertise in the field of computer forensic analysis. If called as a witness, I would testify competently to the facts set forth in this affidavit.

2. Kroll Ontrack is a world-wide leader in data recovery, electronic discovery, and computer forensic services. Kroll Ontrack is routinely retained as an expert or consultant in investigations, criminal prosecutions, civil litigations, and governmental regulatory proceedings. Kroll Ontrack is highly protective of the integrity of the computer hardware, software, and data in its

possession and utilizes state-of-the-art equipment to ensure that no loss of data or damage to the equipment under inspection occurs. Moreover, Kroll Ontrack is a secure facility and does not permit outside non-secure access to its premises.

3. Kroll Ontrack received an Apple laptop computer from Julia Spivack, C/O Seward & Kissell LLP, on May 6, 2008. The computer contained a "Fujitsu" brand hard drive bearing serial number "NZOS1782RKJV." The drive was assigned a unique Kroll Ontrack media identification designator of A01 ("A01").

4. An "image" is made in order to preserve the integrity of the original media. The imaging process creates an exact duplicate of all data resident on the original media. The imaging process does not change or alter the information on the original computer media in any way. The image contains active data (files accessible to a typical user of the computer/media in question) as well as all areas where deleted or partially overwritten files may exist. The image of the A01 media is a true and accurate forensic copy of the data from the Apple laptop as received by Kroll Ontrack on May 6, 2008.

5. Upon completion of the imaging process, Kroll Ontrack proceeded to perform deleted data recovery on the A01 media. A01 contains multiple sections or data areas, called "partitions." One of these partitions contains an Apple Macintosh operating system and another partition contains a Microsoft Windows operating system. Unlike a Microsoft Windows based system, when a file is deleted from an Apple operating or file management system, the metadata for the file is immediately overwritten. As a result, the actual deleted file data cannot be recovered, and only partial fragments of random deleted data can be recovered from the Apple Macintosh partition. By contrast, deleted file metadata is not immediately overwritten and can be recovered from the Microsoft Windows file system. As a result, deleted files can be fully or partially recovered from the Microsoft Windows partition.

6. Evidence on the A01 media indicates that the laptop computer was not used after April 28, 2008. This is based on the "Last Accessed" date of April 28, 2008 at 2:43 PM Eastern US time zone recorded for any file on the A01 media.

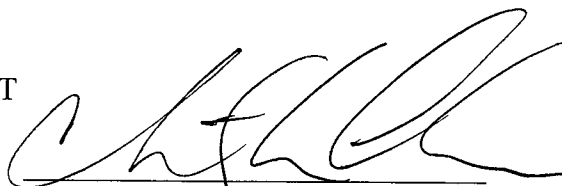
7. On April 4, 2008, 15 files and 3 folders were deleted from the Microsoft Windows partition. These files and folders all contain file system metadata indicating that they are "deleted" and all bear "Last Accessed" dates of April 4, 2008. Since the "Last Accessed" dates are not updated after a file is deleted then the act of emptying the Windows Recycle Bin was the

last process to update the "Last Accessed" dates for these files. These files are named:

- a. appcompat.txt
- b. CARONLINA HERRARA.ai
- c. St. Regis List.xls
- d. stephen letter.doc
- e. W HOTEL CONCEPT 1.ai
- f. W HOTEL CONCEPT 1.pdf
- g. W HOTEL CONCEPT 2.ai
- h. W HOTEL CONCEPT 2.pdf
- i. W HOTEL CONCEPT 3.ai
- j. W HOTEL CONCEPT 4.ai
- k. W HOTEL CONCEPT 5.ai
- l. W HOTEL CONCEPT 6.ai
- m. W HOTEL HOME FRAGRANCE PROPOSAL.pdf
- n. W HOTEL PROPOSAL.ai
- o. WHotels.zip
- p. w
- q. W HOTEL
- r. Whotel

8. True and correct copies of the recovered deleted files that were deleted on April 4, 2008, and identified in paragraph 7 of this Affidavit, are attached as Exhibit A. Exhibit A is a CD that will enable the court and the parties to this action to review the recovered deleted files simply by placing the CD in a laptop or desktop computer and accessing it through the CD or DVD drive.

FURTHER YOUR AFFIANT SAYETH NAUGHT

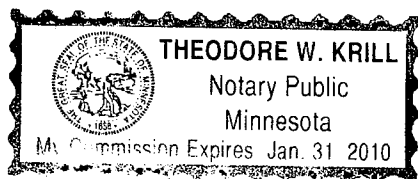

Christopher Andrews

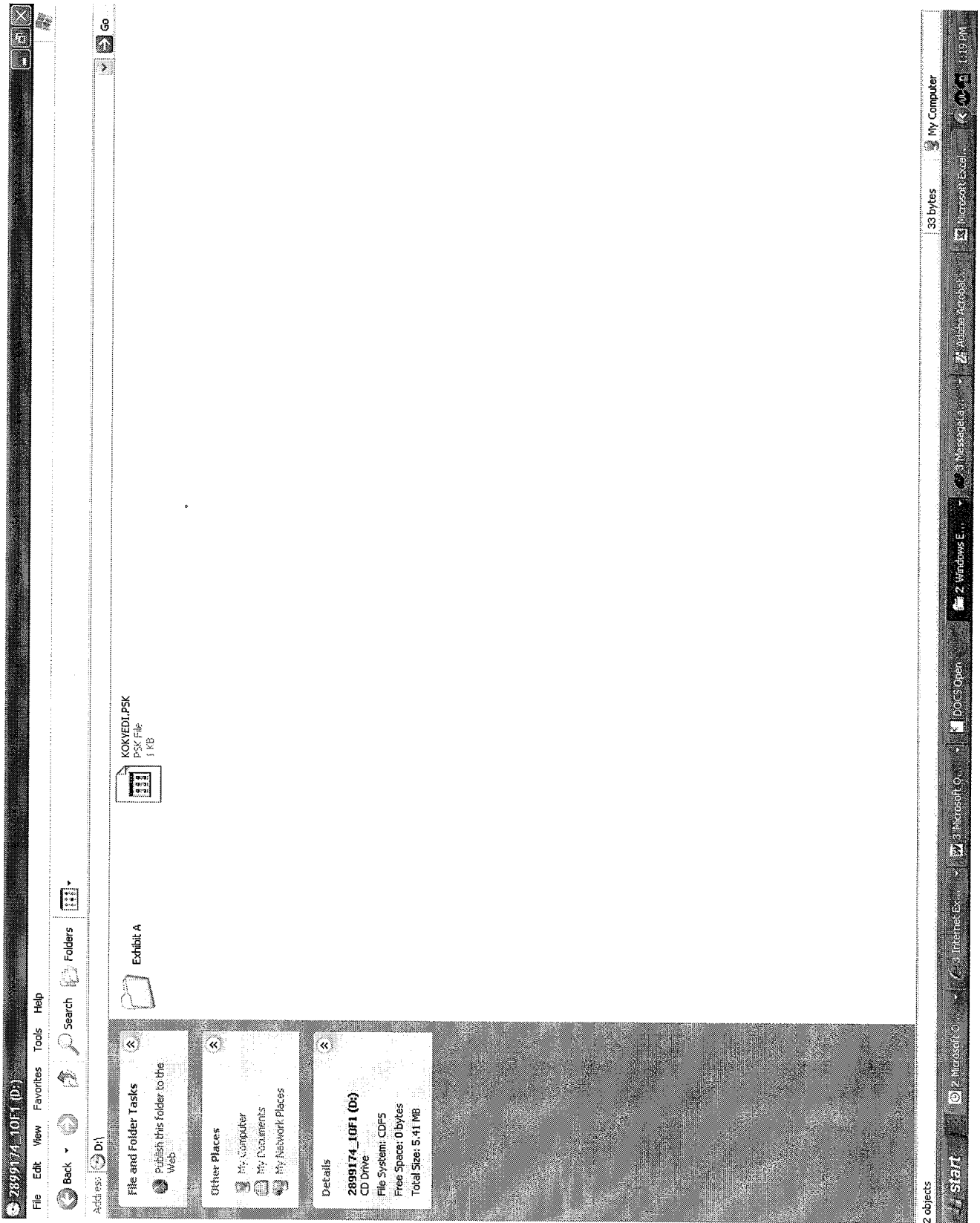
Sworn to and subscribed before me
this 18th day of June, 2008.

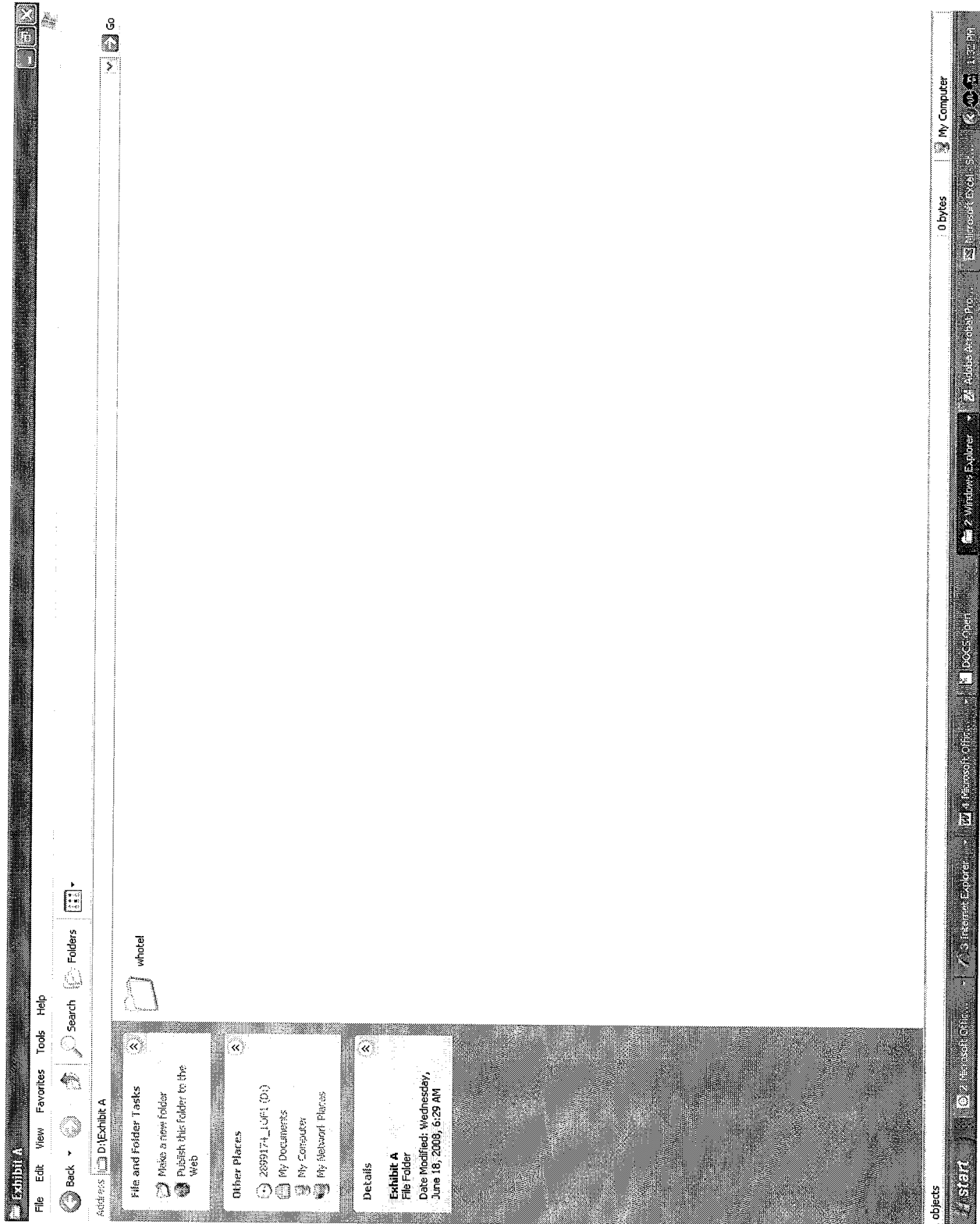


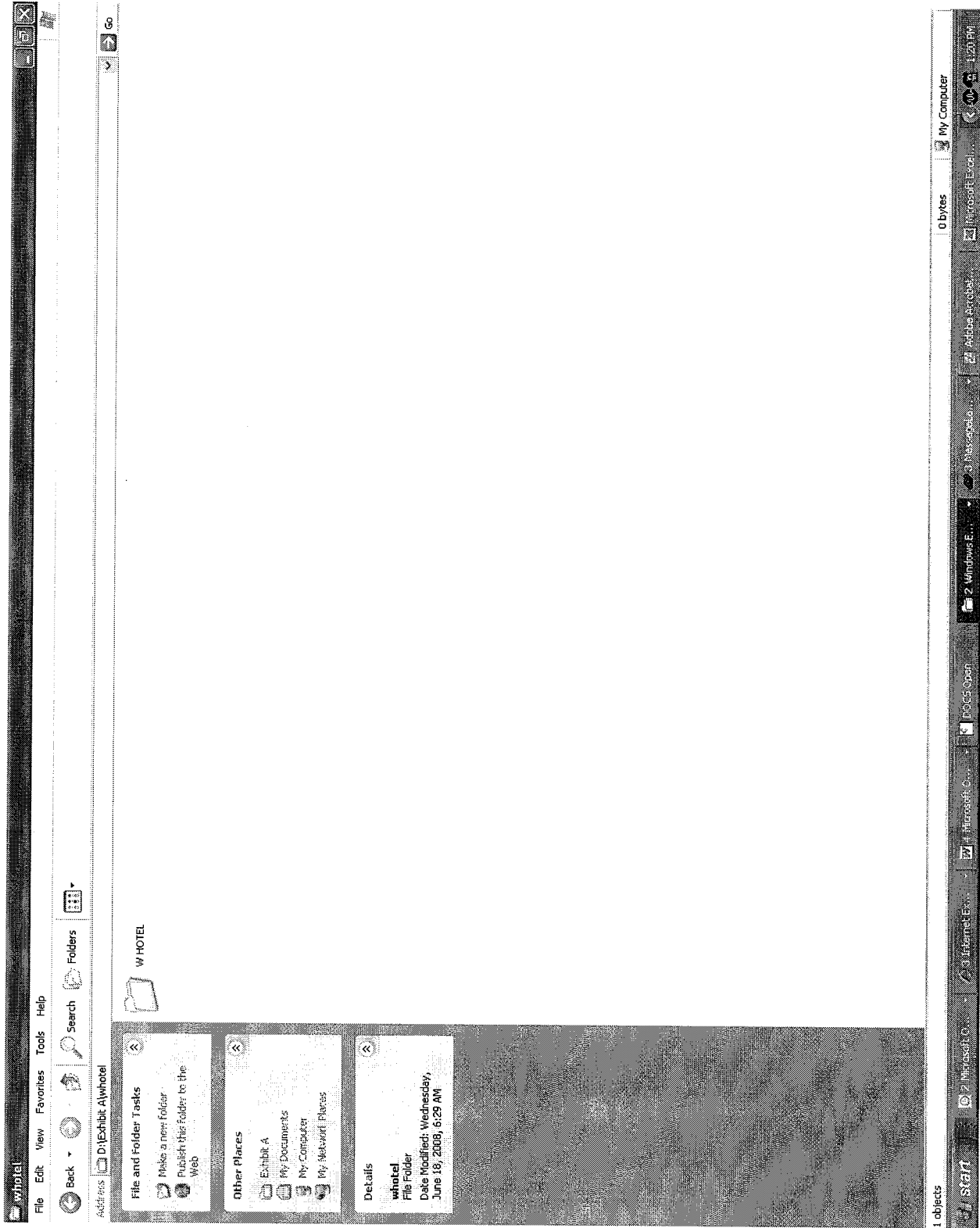
NOTARY PUBLIC

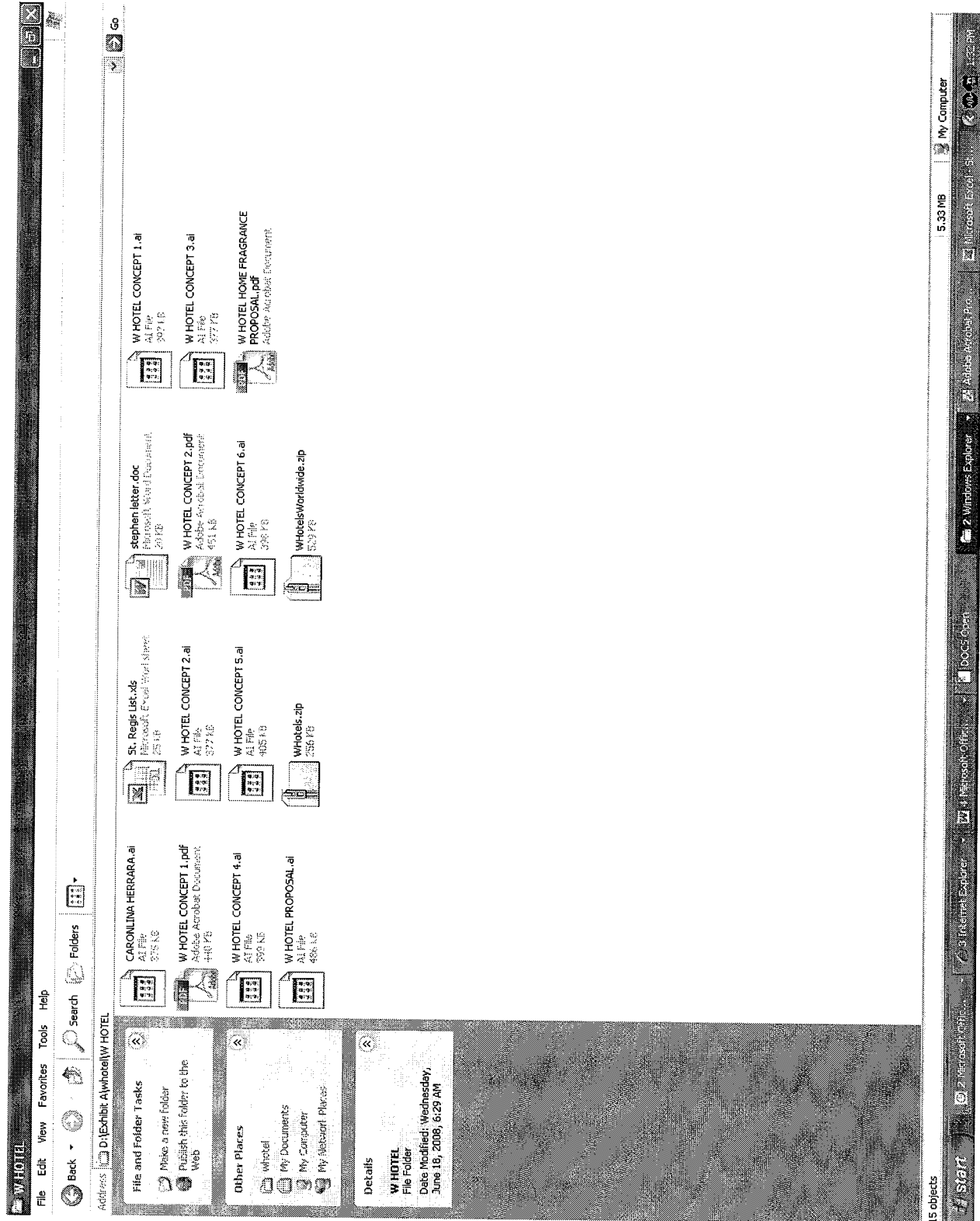
My Commission expires: 1/31/2010



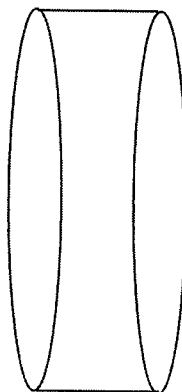
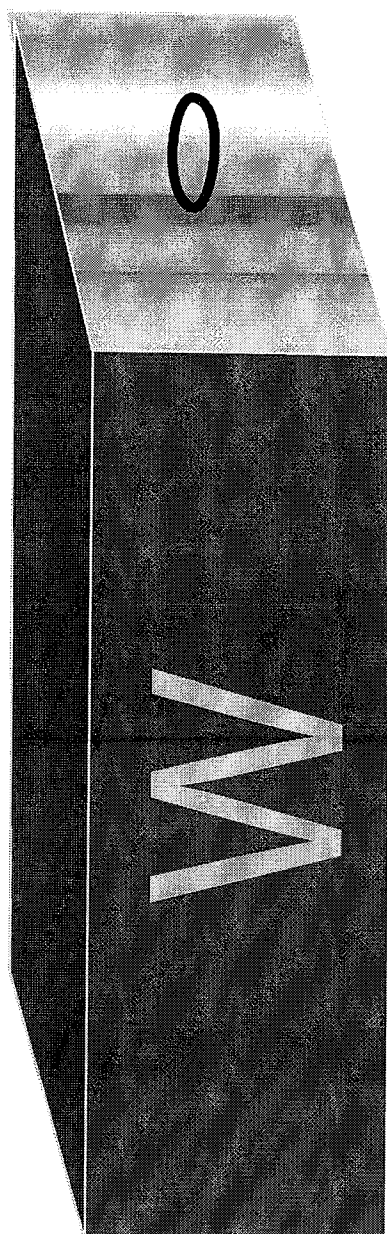




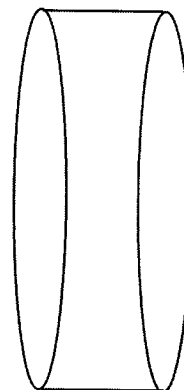




THIS IS NOT FOR SIZE, JUST FOR LAYOUT AND COLOR PLACEMENT.



I WOULD LIKE THE CANDLE GLASSES TO SIT THE LONG WAY IN THE BOX, NOT SIDE BY SIDE.



St. Regis General Managers and Executive Assistants

PROPERTY	GENERAL MANAGER/EXEC. ASSISTANT	TELEPHONE	FAX	MOBILE	SHIP TO	SINGLE WICK	THREE WICK	BILL TO
Anguilla	Brian Schultz n/a	264 222 9000	264 498 9050	n/a				
Aspen	Seath Geray Stephanie Swan	970 429 7371 970 920 7312	970 544 7191 970 544 7191	970 319 6599	St. Regis Resort Aspen Attn: Seath Geray 315 East Dean Street Aspen, CO 81611	40	60	ATTN: Accounts Payable
Bali	Frank Beck							
Beijing	Cary Gray Shirley Zhang	+86 10 6460 6688 x2400 +86 10 6460 6688 x2402	+86 10 6532 1610 +86 10 6532 1610	+86 139 1175 0967	St. Regis Hotel Attn: Cary Gray 21 JinnGumenwai Dajie Beijing, Beijing 100020 China	450	450	ATTN: Accounts Payable
Bora Bora	Milton Sgarbi Sonia Richard	+011 689 603 321 +011 689 864 848	+011 689 603 395 +011 689 607 860	+011 689 715 415	St. Regis Resort, Bora Bora Attn: Milton Sgarbi Motu One's BP 506 Bora Bora 98730 French Polynesia	120	120	ATTN: Accounts Payable
Fort Lauderdale	Michael Hatzfeld n/a	954 465 2300	954 465 2340	970 319 6599	St. Regis Ft. Lauderdale Attn: Michael Hatzfeld 1 North Ft. Lauderdale Beach Blvd. Fort Lauderdale, FL 33304	190	45	ATTN: Accounts Payable
Houston	Paul Nash Sandy Bertram	713 403 2600 713 403 2624	713 840 7547 713 840 7547	832 746 9354	St. Regis Houston Attn: Paul Nash 1919 Briar Oaks Lane Houston, TX 77027	30	30	ATTN: Accounts Payable
Lancashire	Geoffrey Gelardi Marie Poli	+44 20 7333 7000 +44 20 7333 7000	+44 20 7333 7026 +44 20 7333 7026	+44 77 85 997 993				
Mallorca	Andreas Oberoi	34 971 629629			St. Regis Mardavall Mallorca Attn: Andreas Oberoi Passeig Calvia s/n Costa d'en Blanes Palma de Mallorca 07181 Spain		20	ATTN: Accounts Payable
Monarch Beach	Johnny So Jennifer Ebdon	949 234 3300 949 234 3301	949 234 3333 949 234 3333	949 78 2677				
New York	Scott Geraghty Celia Kim	212 339 6742 212 339 6741	212 980 9418 212 980 9418					
Rome	Michele Frignani Elisabetta Pantano	+39 06 4709 2811 +39 06 4709 2813	+39 06 4709 2831 +39 06 4709 2831	+39 335 724 1939	St. Regis Grand Rome Attn: Michele Frignani Via Vittorio E. Orlando, 3 Rome 00185 Italy		60	ATTN: Accounts Payable
San Francisco	Toni Knorr Maureen Bagaman	415 284 4050 415 284 4051	415 284 4030 415 284 4020	415 568 0010		75		
Singapore	Yngvar Stray	65 6506 6888			St. Regis Singapore Attn: Yngvar Stray 29 Tanglin Road Singapore 247911 Singapore	100	100	ATTN: Accounts Payable
Shanghai	Chuck Abbott Annie Fei	+86 21 5820 9555 +86 21 5050 4567 x6810	+86 21 5820 3793 +86 21 5820 3793	+86 139 1658 8607			150	
Washington D.C	Laura Schofield Teresa Rivers	202 879 6959 202 879 6908	202 879 6917 202 879 6917	202 258 6876	923 16th and K Streets, N.W. Washington, District of Columbia 20006	185	160	ATTN: Accounts Payable
LBG Brand Office	Lorna Montalvo							

April 24, 2007

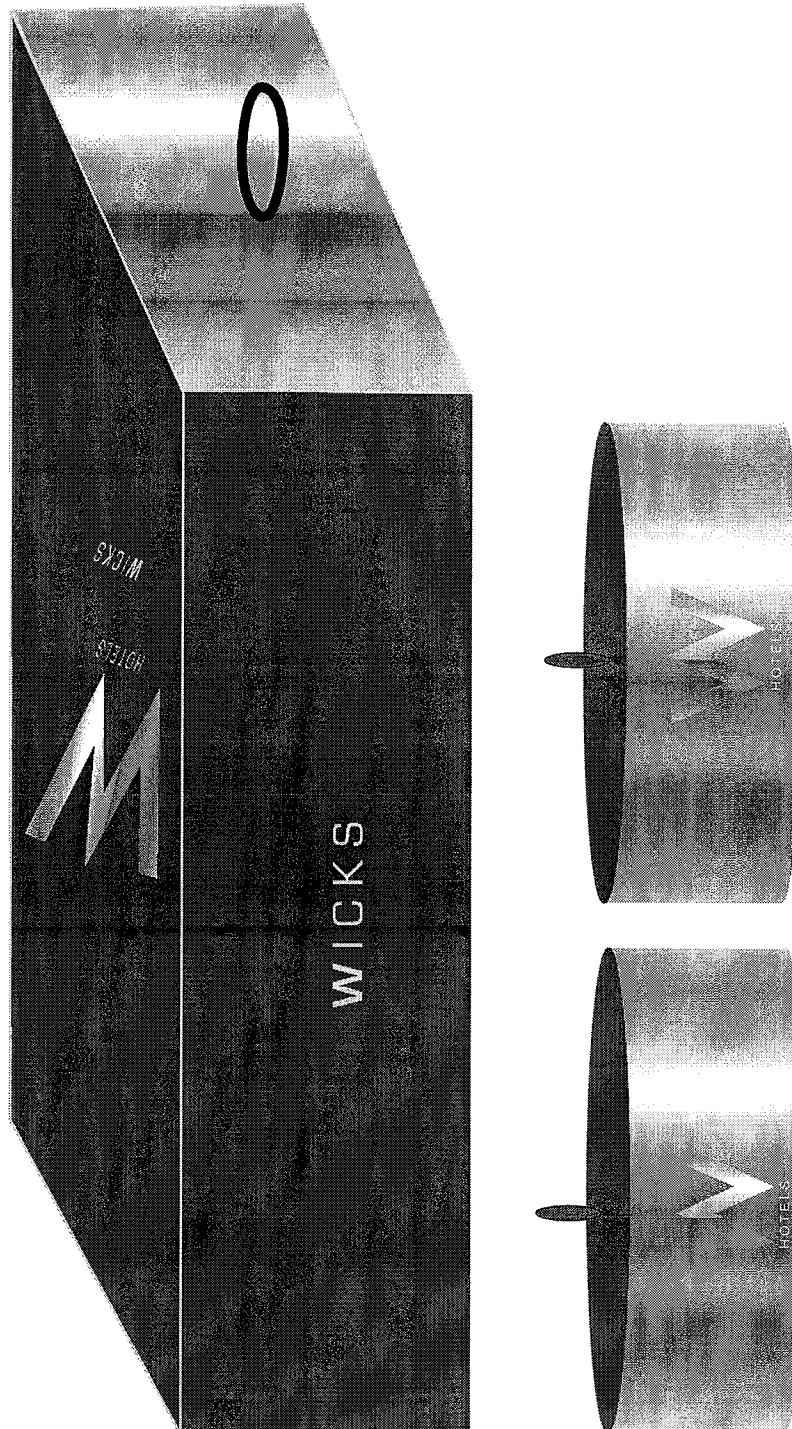
Dear Stephen,

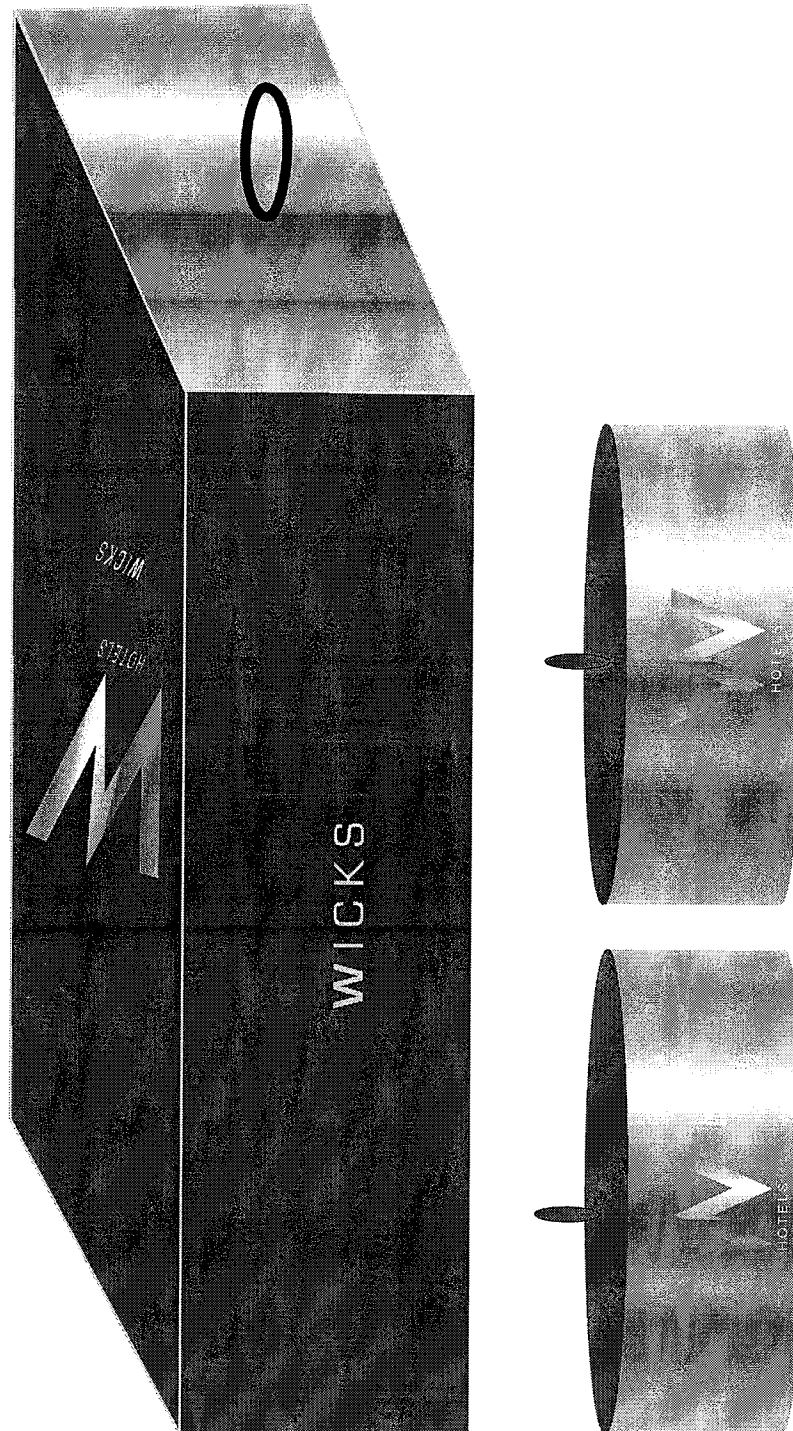
Enclosed are the mock ups we discussed for the "WICKS" collection (to continue the "Whatever, Whenever" concept). These are hand-done mock ups for concept only—not for color match, fit, fragrance or quality. In production, the paper and wax will be perfectly matched to the W Pantone color and the alignment of all borders, logos and copy will be symmetrical. Please note that I am proposing that all copy will be silver foil (unfortunately for these samples, I was not able to have all the copy foil). Please also note that we will provide color draw downs to approve on the actual paper stock used to wrap the boxes as well as artwork proofs (to ensure the correct scale and placement of all copy). Lastly, please note that the glasses will have the W logo etched onto the glass (as the Vie Luxe logo is currently done).

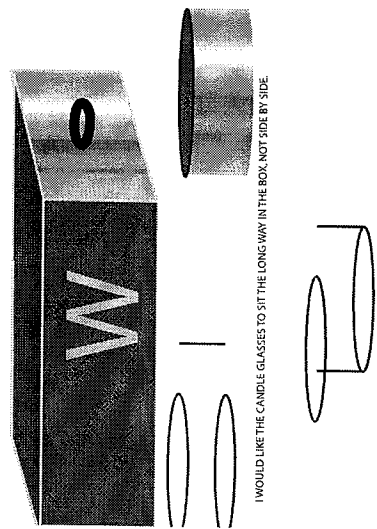
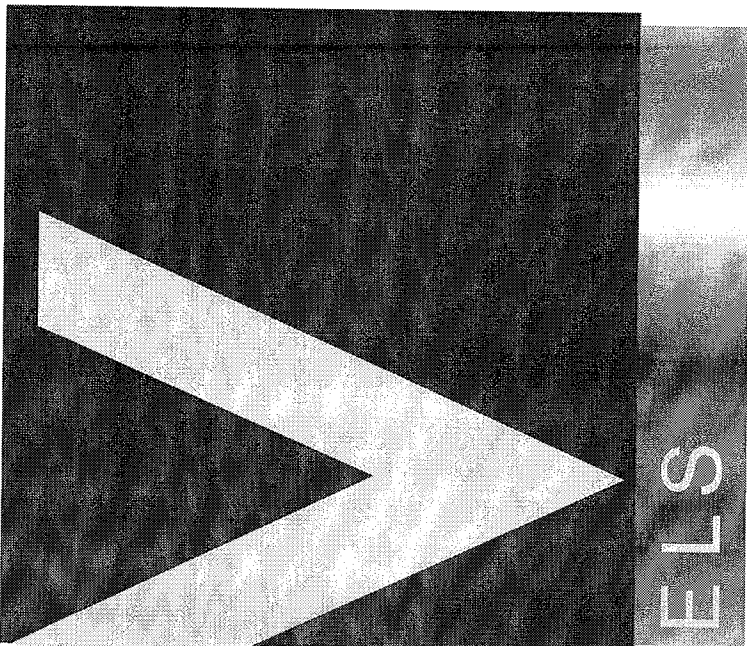
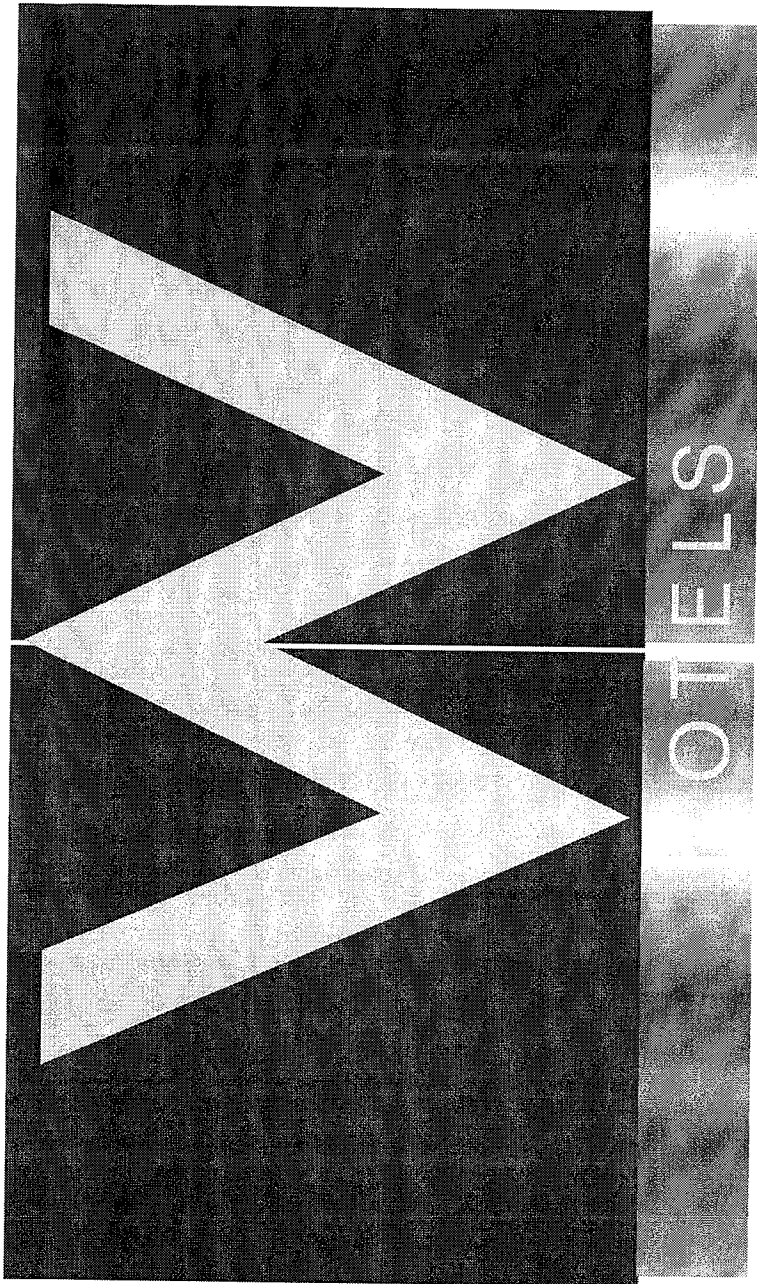
I will look forward to hearing what everyone thinks!

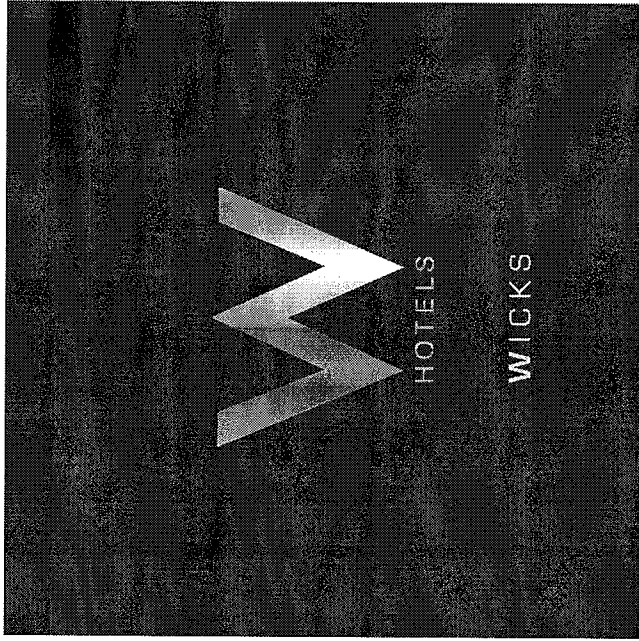
All the best,

Daniel P. Benedict

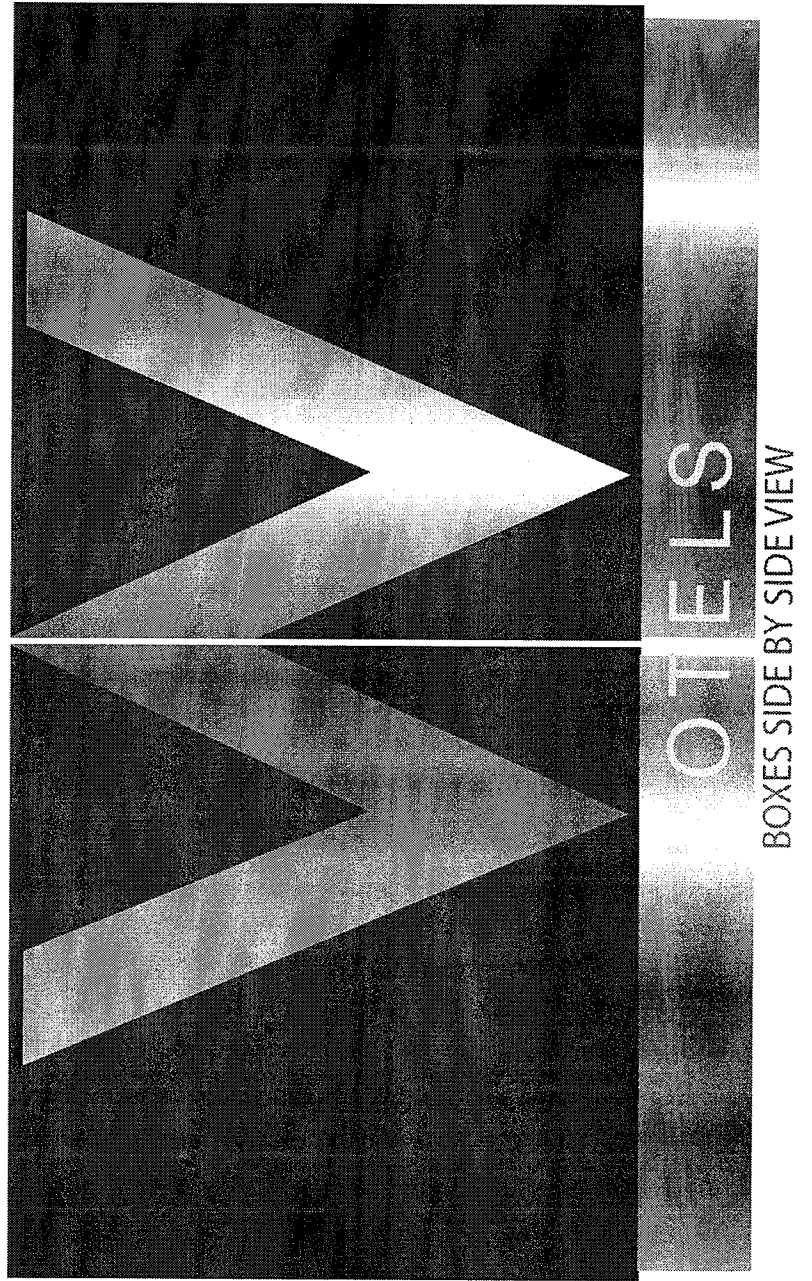




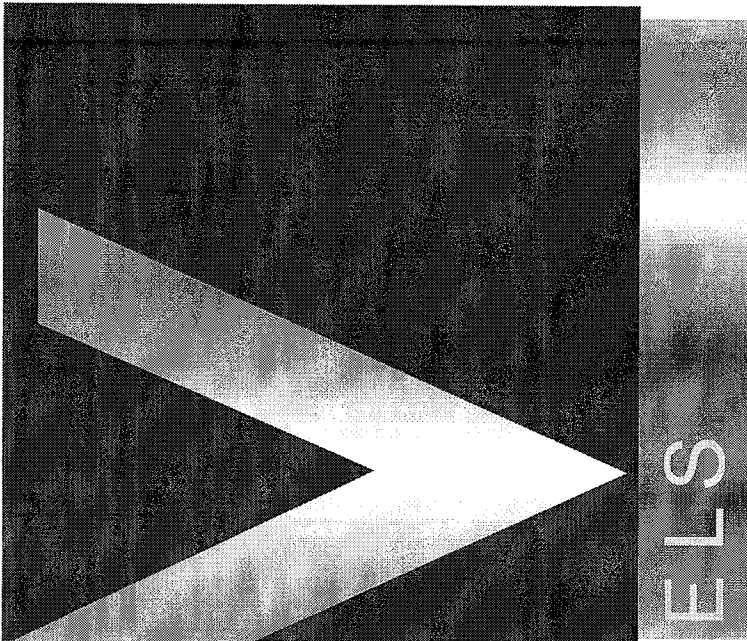




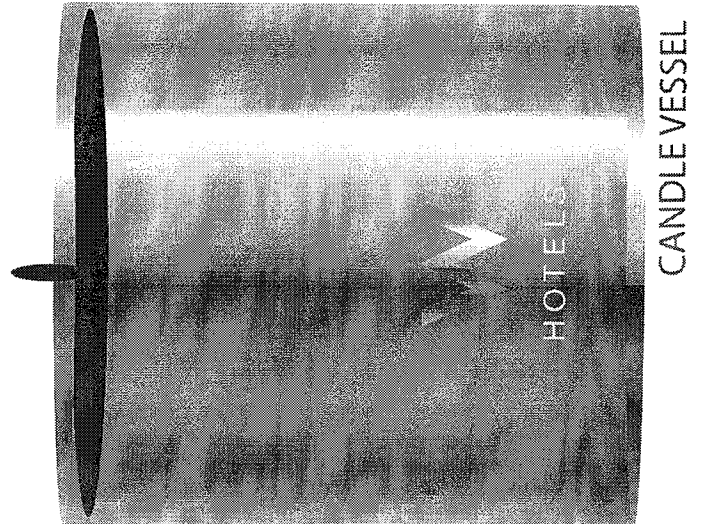
BOX LID VIEW



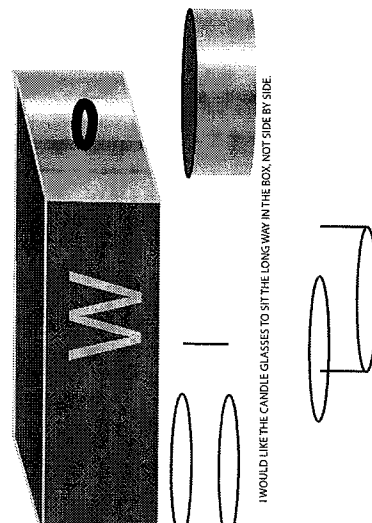
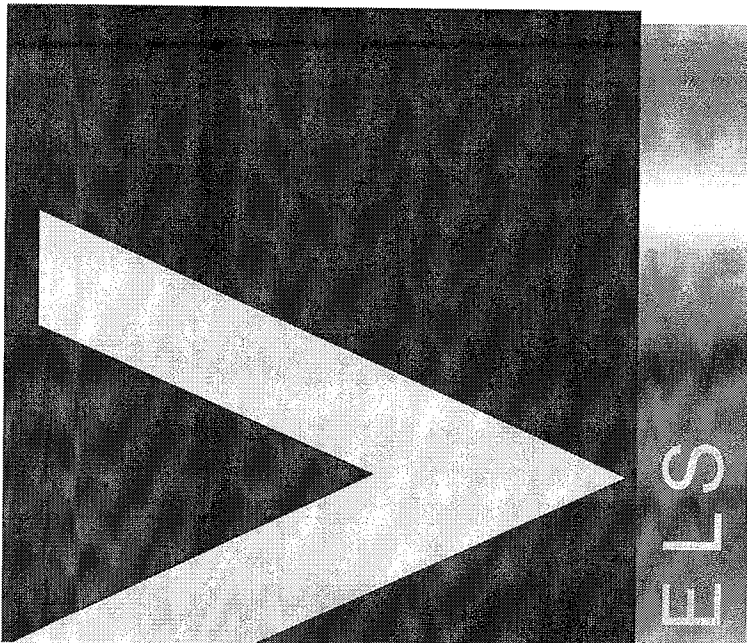
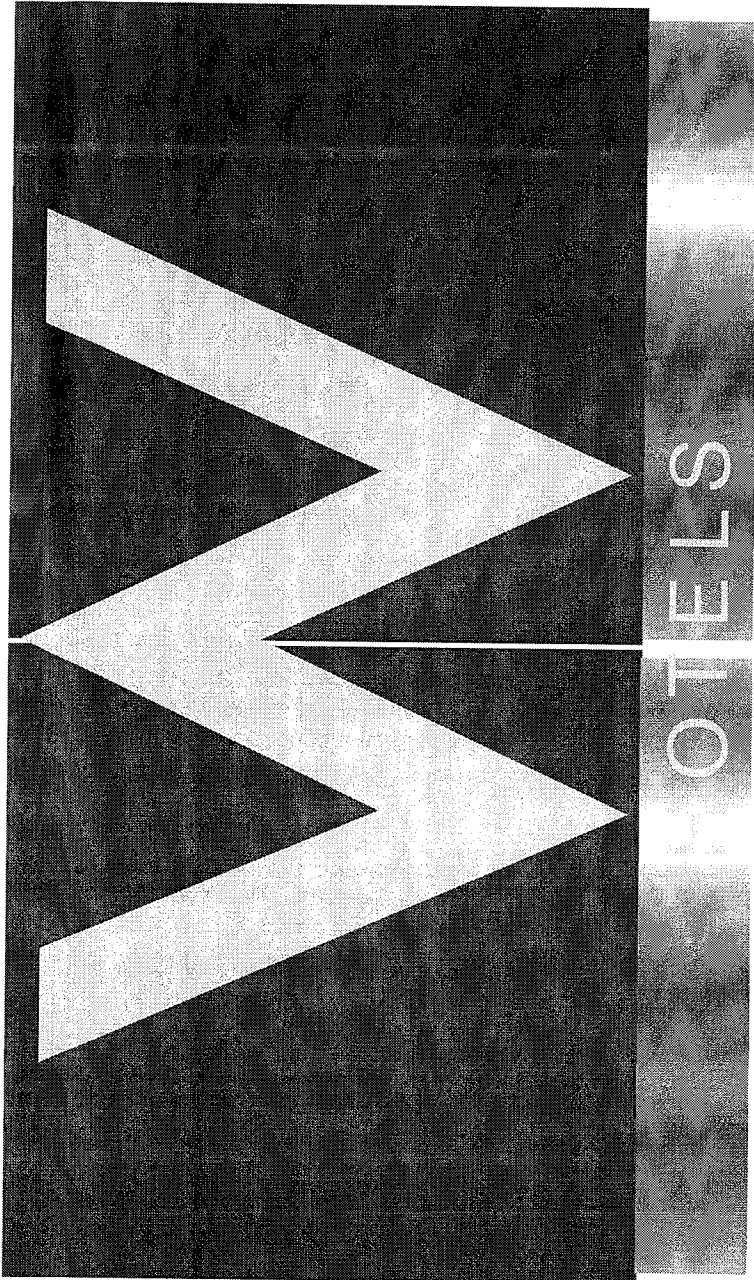
BOXES SIDE BY SIDE VIEW



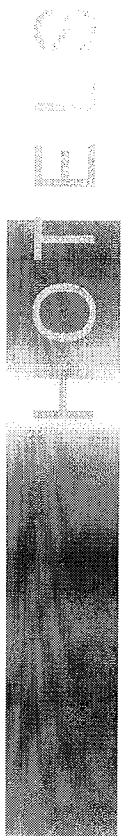
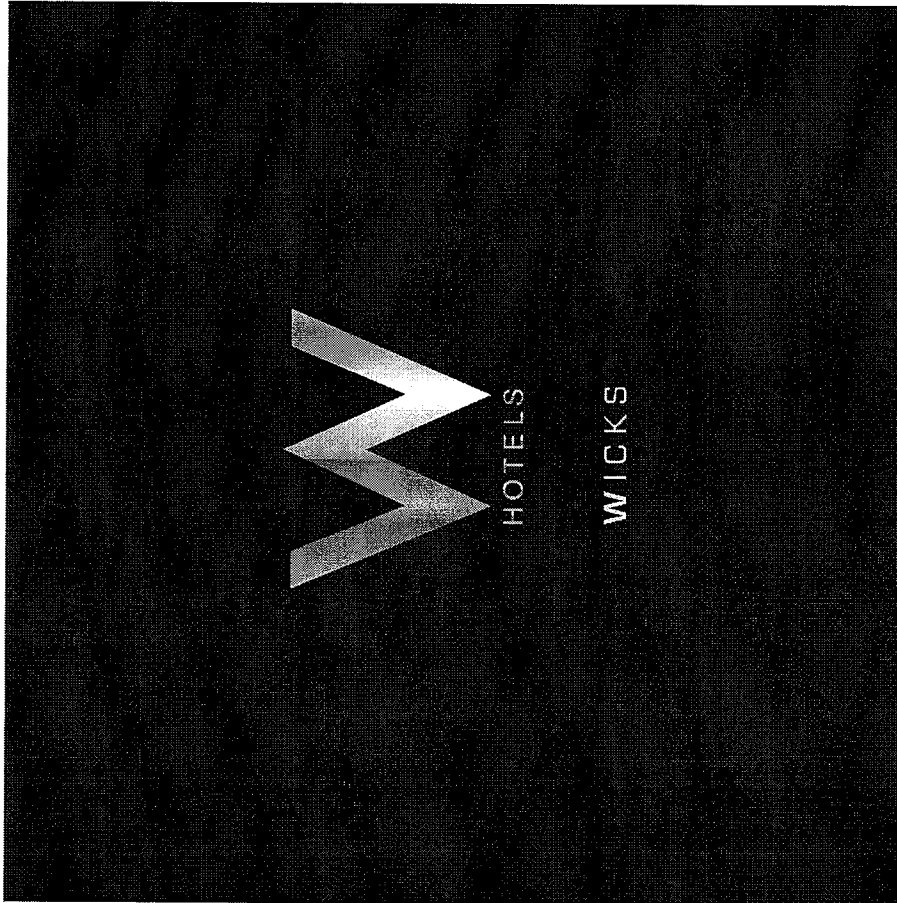
BOX FRONT VIEW

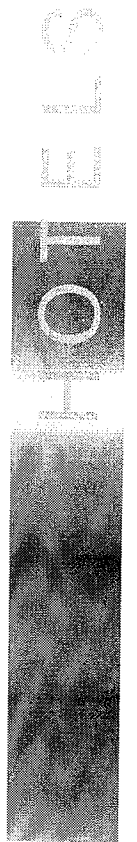
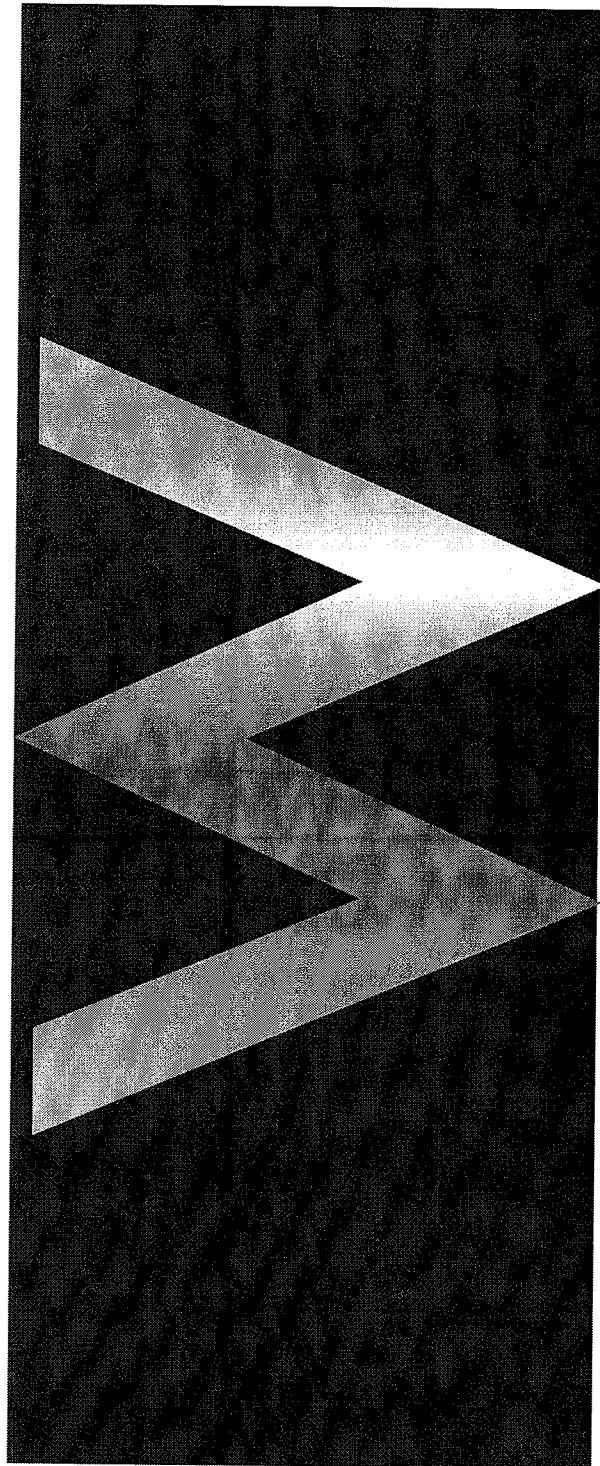


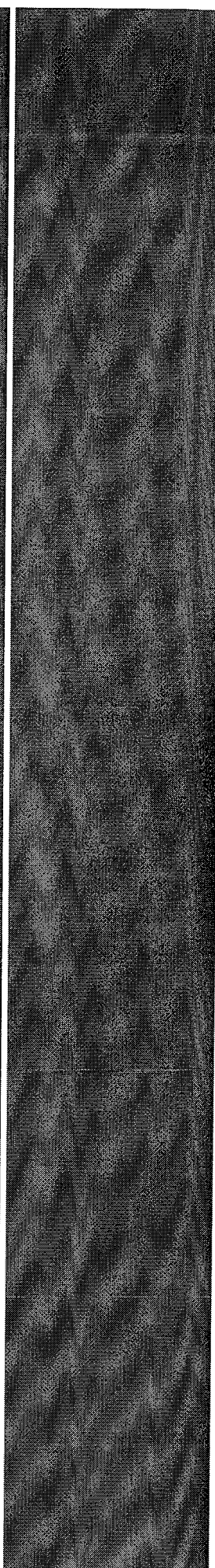
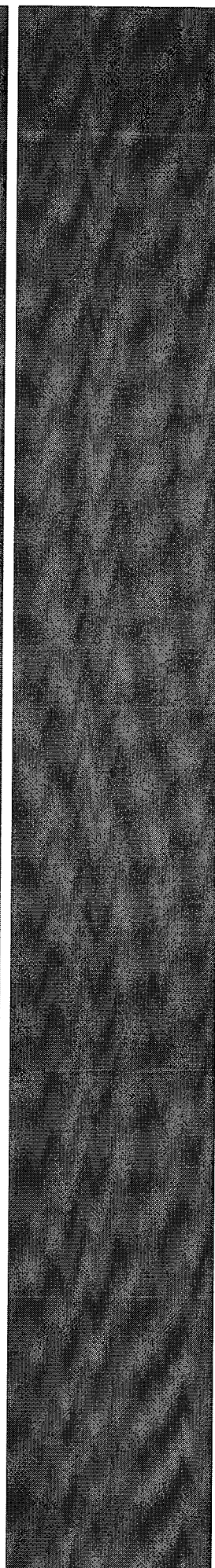
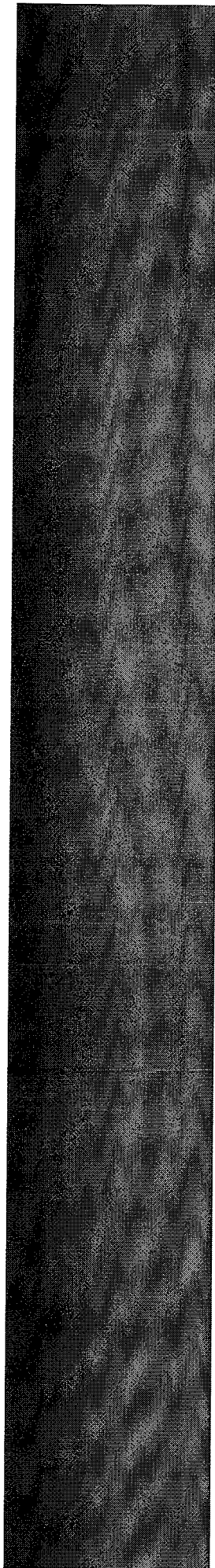
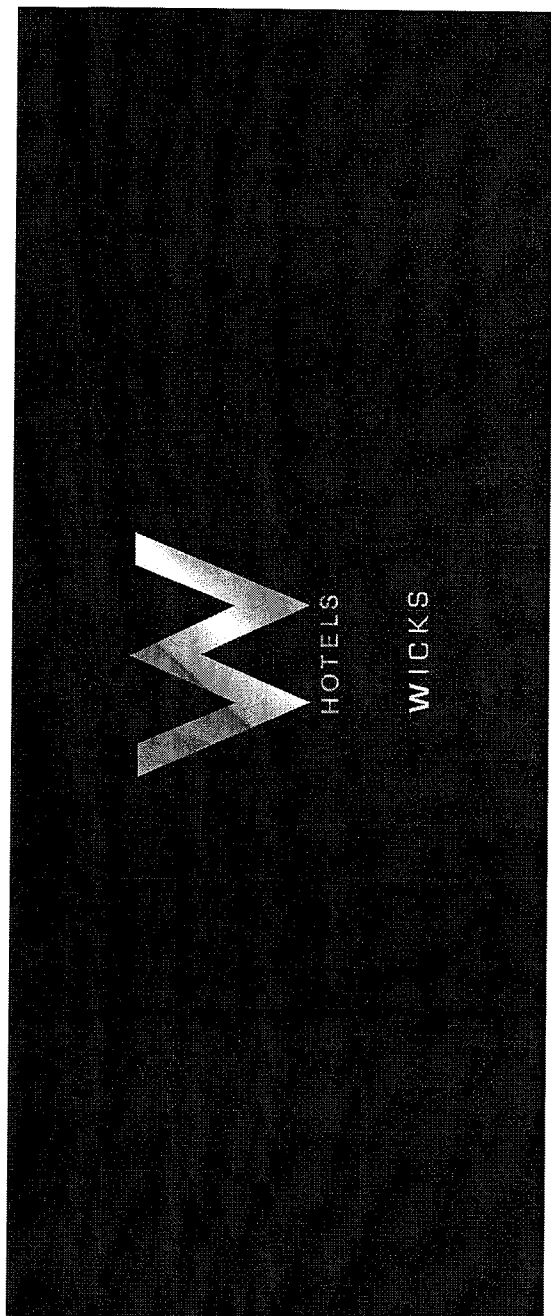
CANDLE VESSEL



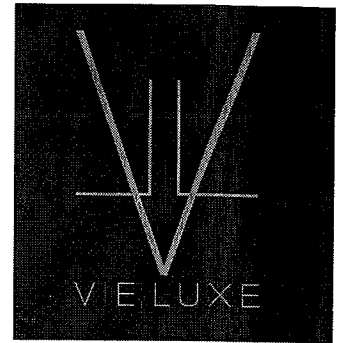
I WOULD LIKE THE CANDLE GLASSES TO SIT THE LONG WAY IN THE BOX, NOT SIDE BY SIDE.







PROPOSAL



W HOTEL HOME FRAGRANCE COLLECTION

INITIAL PRODUCT RANGE

- DELUXE SINGLE-WICK CANDLE--FOUR FRAGRANCES: AUTUMN, WINTER, SPRING AND SUMMER
- DELUXE THREE-WICK CANDLE--FOUR FRAGRANCES: AUTUMN, WINTER, SPRING AND SUMMER

FRAGRANCES

- TBD--CUSTOM FRAGRANCES FOR ALL FOUR SEASONS

PACKAGING

BOX OPTION

- DELUXE SINGLE WICK & DELUXE THREE WICK CANDLE
W HOTEL PURPLE PANTONE COLOR MATCH BOX TOP WITH SILVER FOIL LOGO, COPY AND BORDERS. SILVER
BASE WITH MATTE SILVER "HOTEL"

CANDLE GLASS

- NICKEL FINISH GLASS WITH MATTE NICKEL LOGO AND CO BRANDED WITH VIE LUXE.

TIME LINE

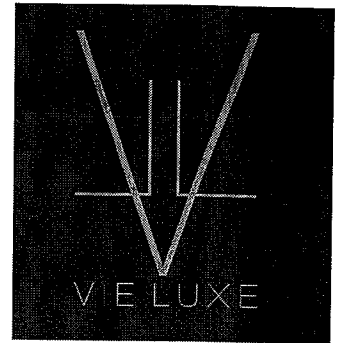
LAUNCH: OCTOBER 15, 2007

- JUNE - CONCEPTS APPROVED AND SIGNED OFF ON AND PURCHASE ORDER AND DEPOSIT NEEDED
- JULY - PRODUCTION SCHEDULED AND ALL COMPONENTS ORDERED
- AUGUST/SEPTEMBER - PRODUCTION BEGINS
- OCTOBER - PRODUCT SHIPS

MINIMUMS, PRICING & TERMS

- QUANTITY IS APPROXIMATELY 7000 UNITS (BULK, NOT IN A GIFT BOX) AND APPROXIMATELY 3000 IN A GIFT BOX, PER SEASON/PER SCENT. THIS QUANTITY TO BE SPLIT BETWEEN LARGE AND THREE WICK CANDLES.
- PRICING IS INCLUSIVE OF ALL COMPONENTS, ARTWORK ETC. (A FINISHED GOOD). SHIPPING TO W HOTELS DISTRIBUTION CENTER OR DIRECTLY TO GIFT STORE(S) IS AN ADDITIONAL CHARGE.
- PRICING:
BULK LARGE CANDLE (NOT IN BOX) IS \$12.50. BOXED CANDLE IS \$18.00
BULK THREE WICK CANDLE (NOT IN BOX) IS \$20.00. BOXED CANDLE IS \$25.50.
- TERMS ARE 50% DEPOSIT UPON RECEIPT OF PURCHASE ORDER AND PRIOR TO ORDERING OF COMPONENTS, 50% BALANCE PRIOR TO SHIPMENT OF GOODS.

PROPOSAL



W HOTEL HOME FRAGRANCE COLLECTION

INITIAL PRODUCT RANGE

- DELUXE SINGLE-WICK CANDLE--FOUR FRAGRANCES: AUTUMN, WINTER, SPRING AND SUMMER
- DELUXE THREE-WICK CANDLE--FOUR FRAGRANCES: AUTUMN, WINTER, SPRING AND SUMMER

FRAGRANCES

- TBD--CUSTOM FRAGRANCES FOR ALL FOUR SEASONS

PACKAGING

BOX OPTION

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- W HOTEL PURPLE PANTONE COLOR MATCH BOX TOP WITH SILVER FOIL LOGO, COPY AND BORDERS. SILVER BASE WITH MATTE SILVER "HOTEL"
-

CANDLE GLASS

- NICKEL FINISH GLASS WITH MATTE NICKEL LOGO AND CO BRANDED WITH VIE LUXE.

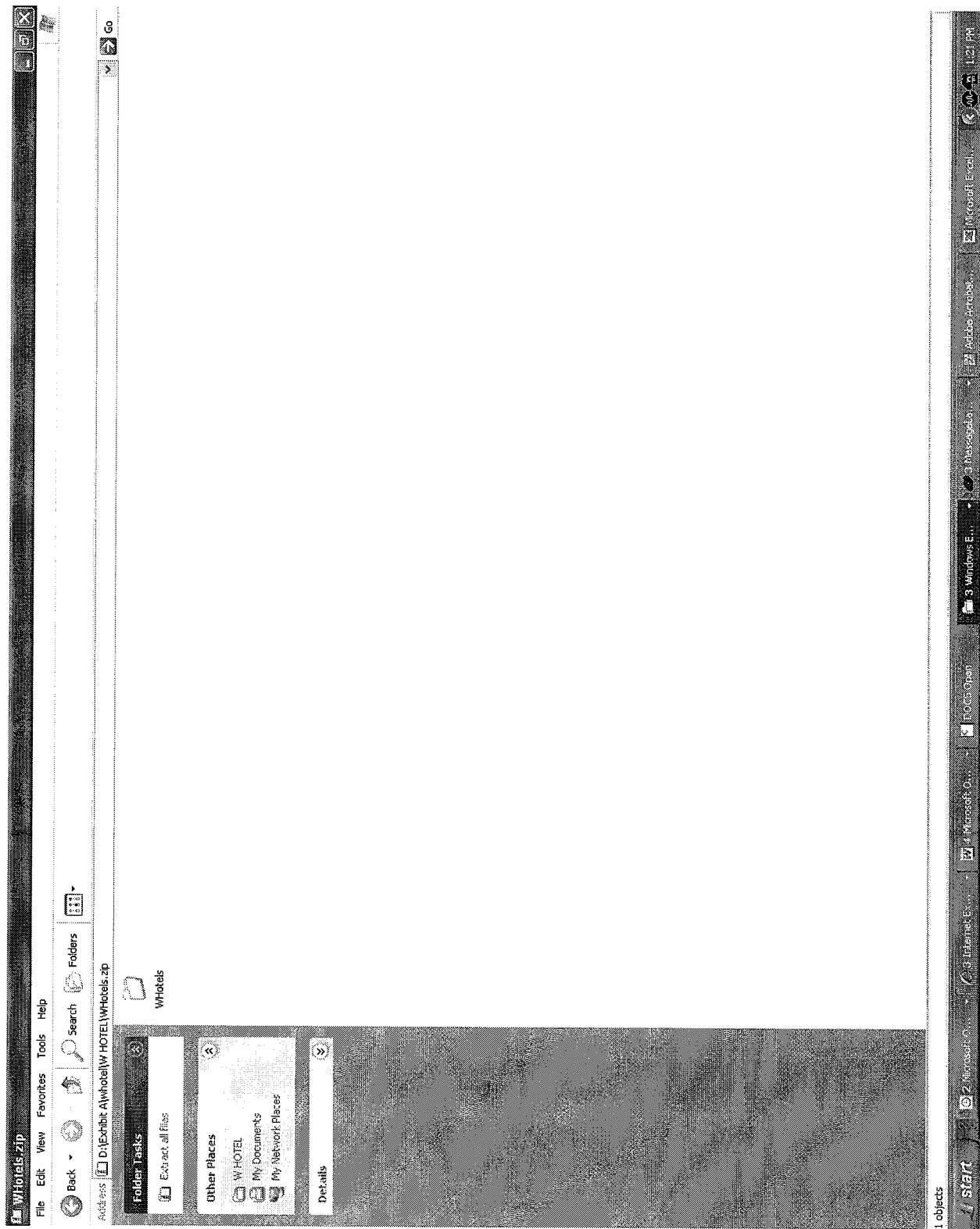
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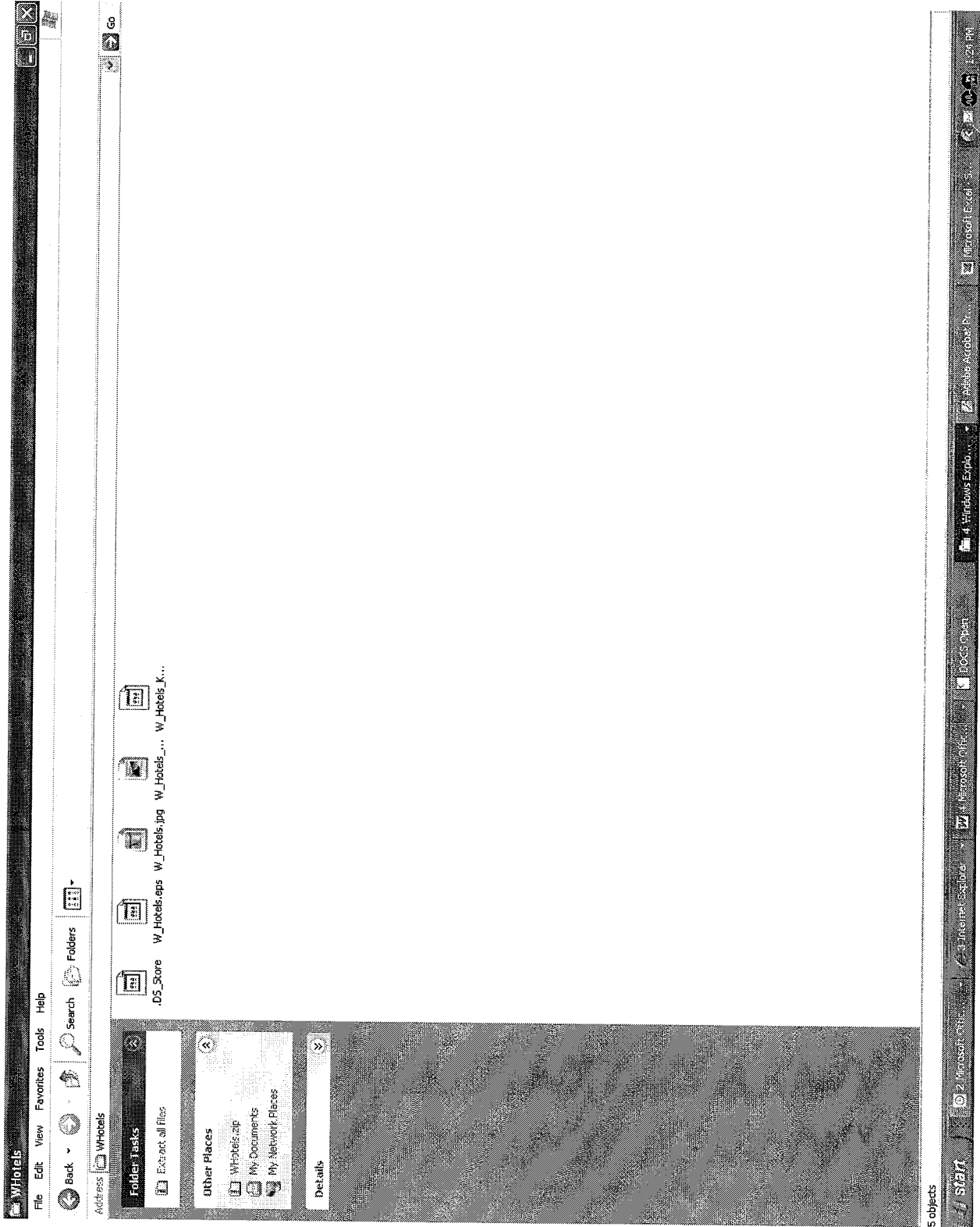
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MINIMUMS, PRICING & TERMS

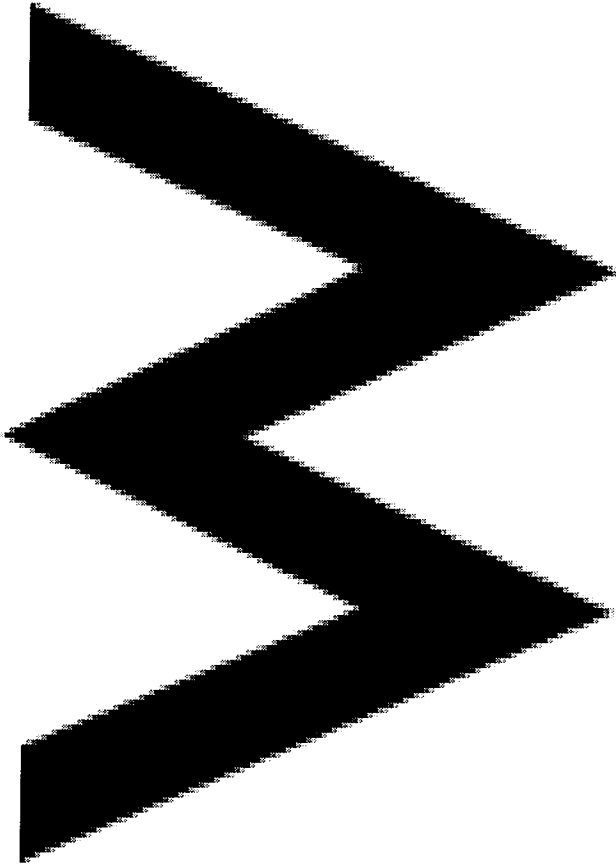
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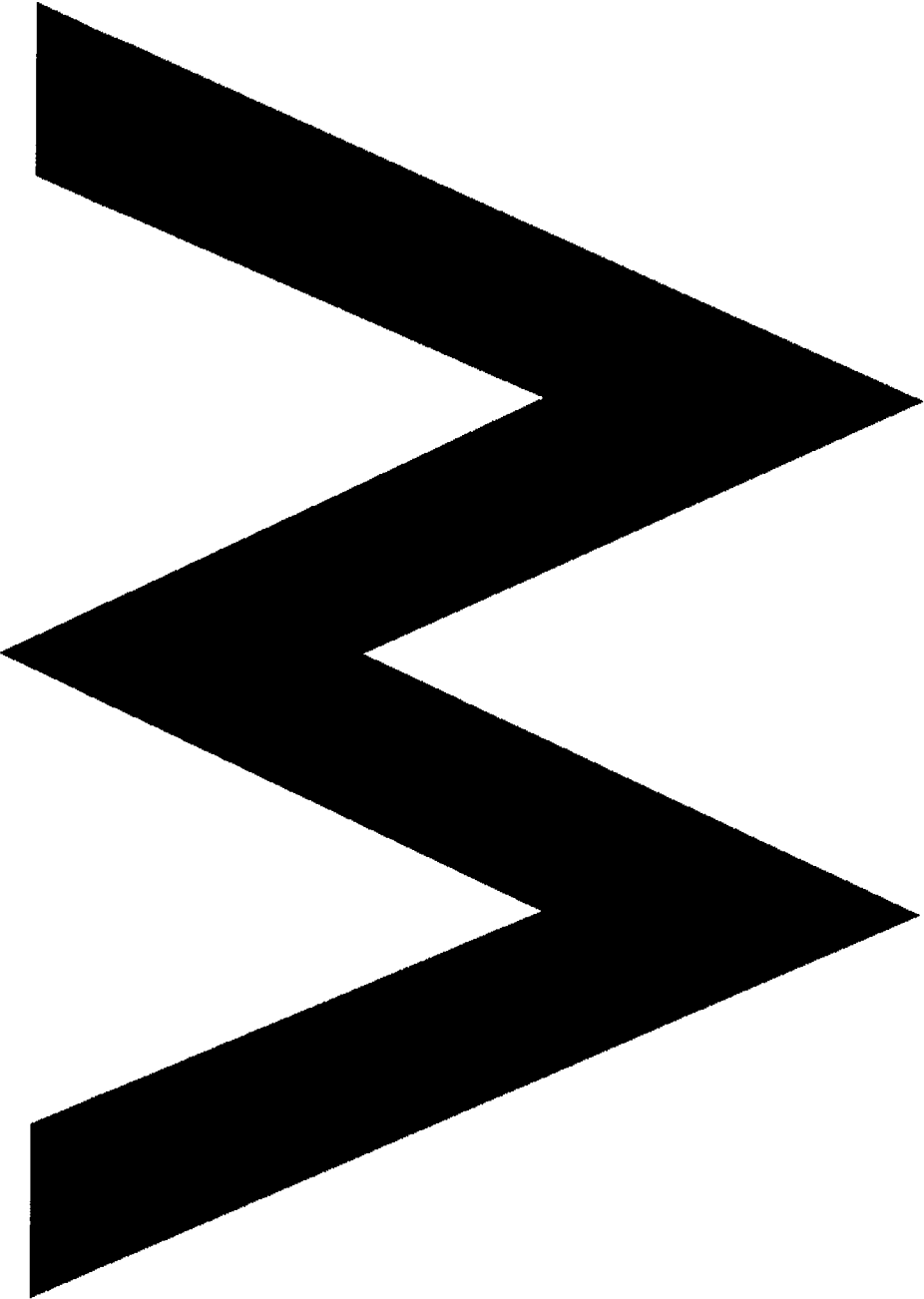


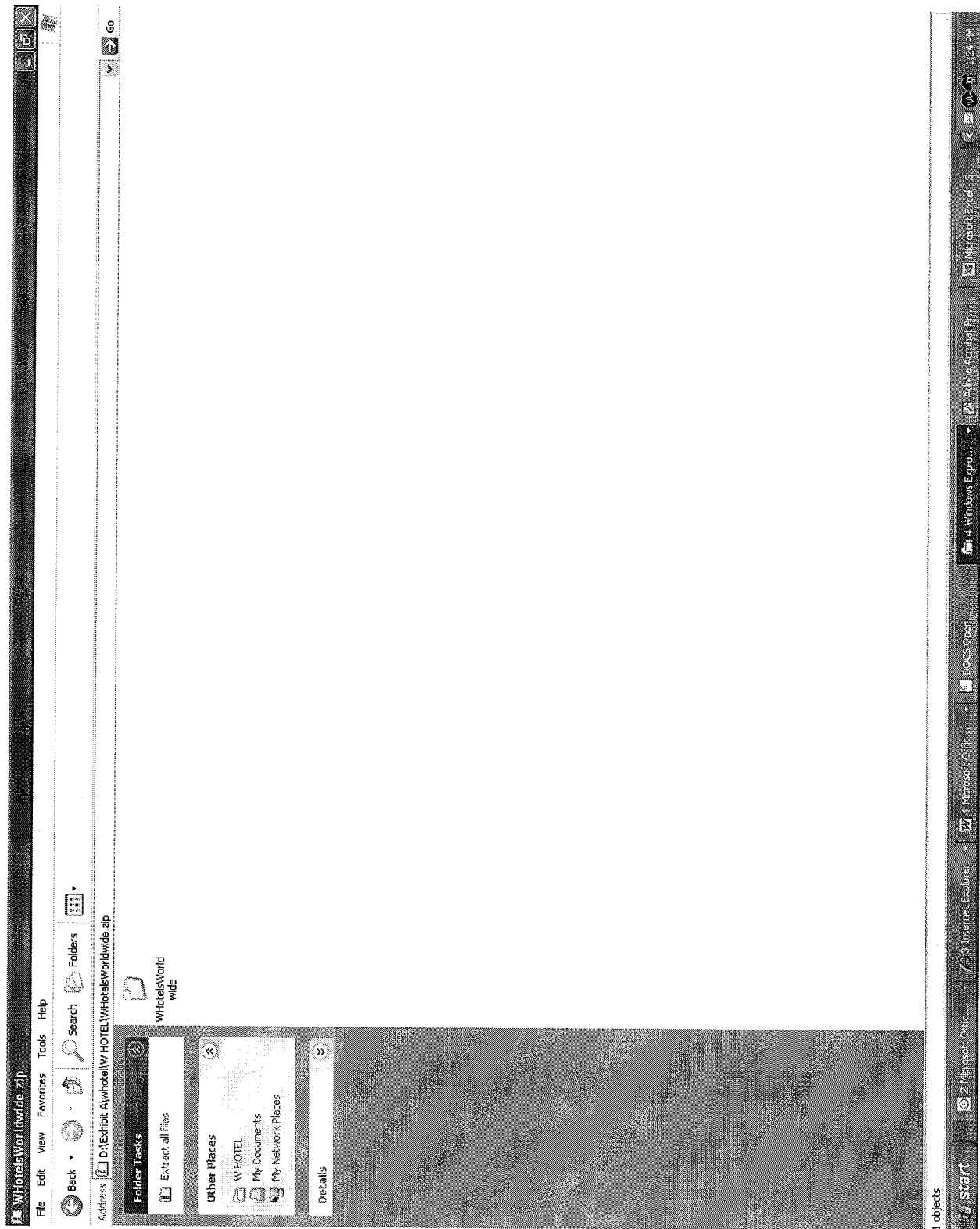


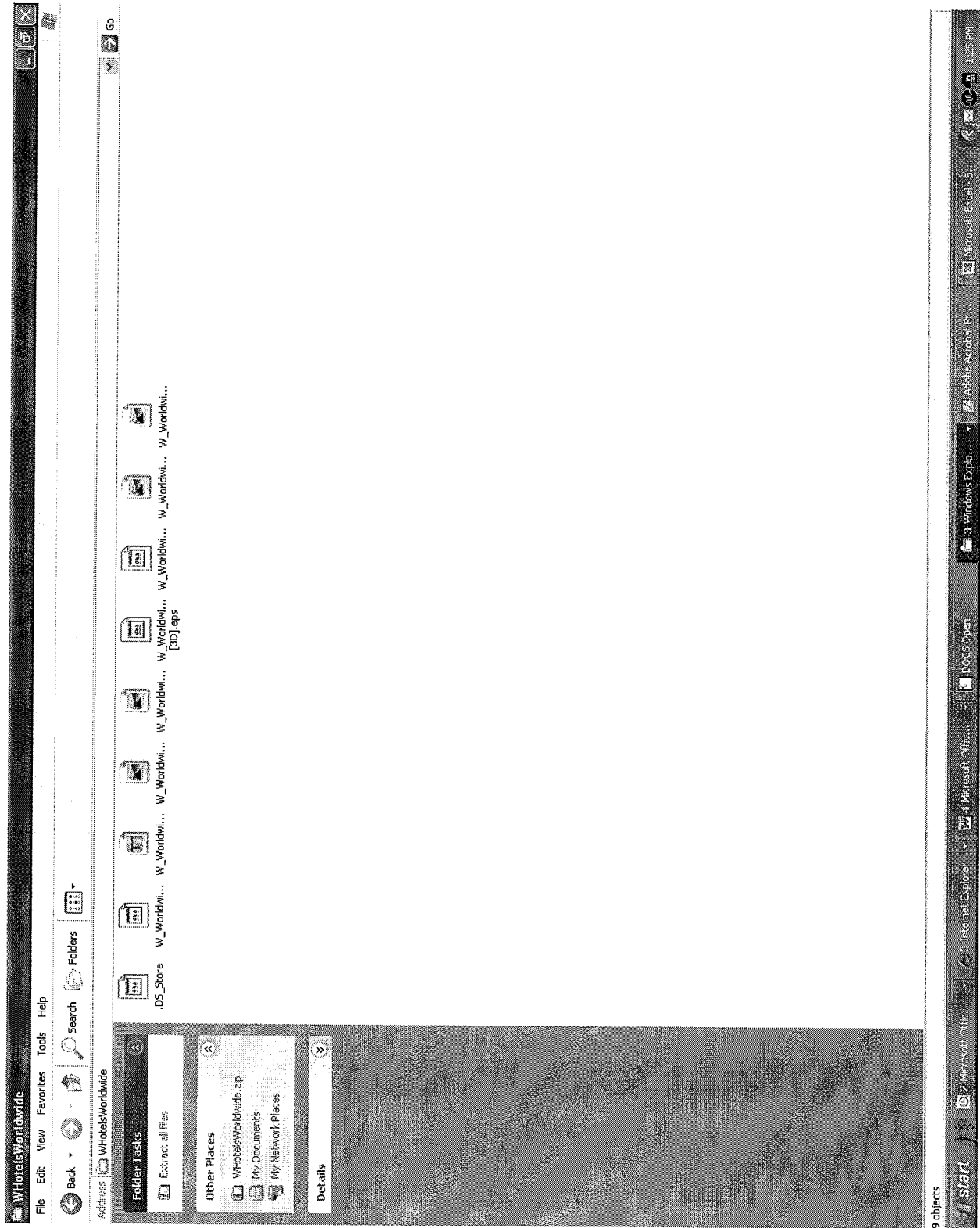
SHOTEL S



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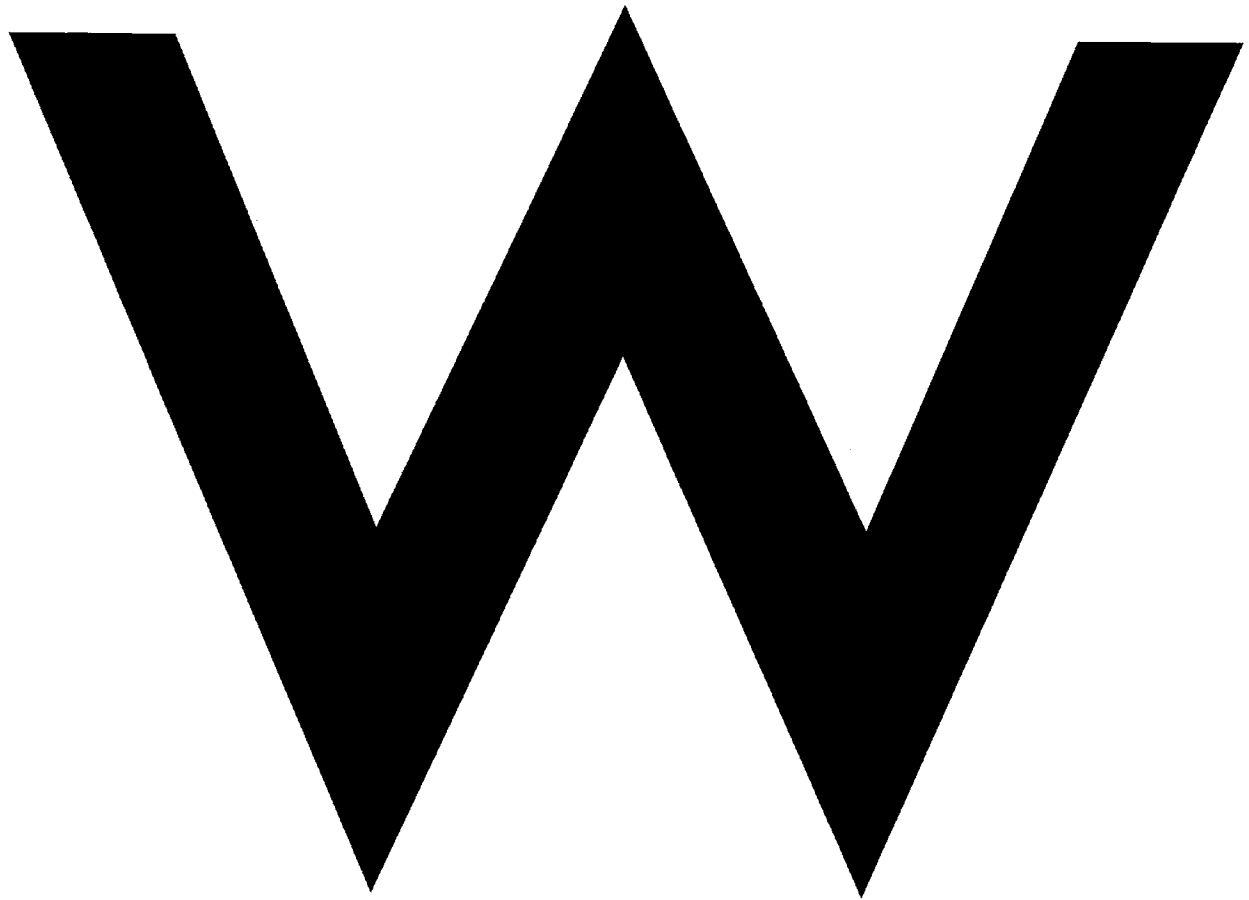






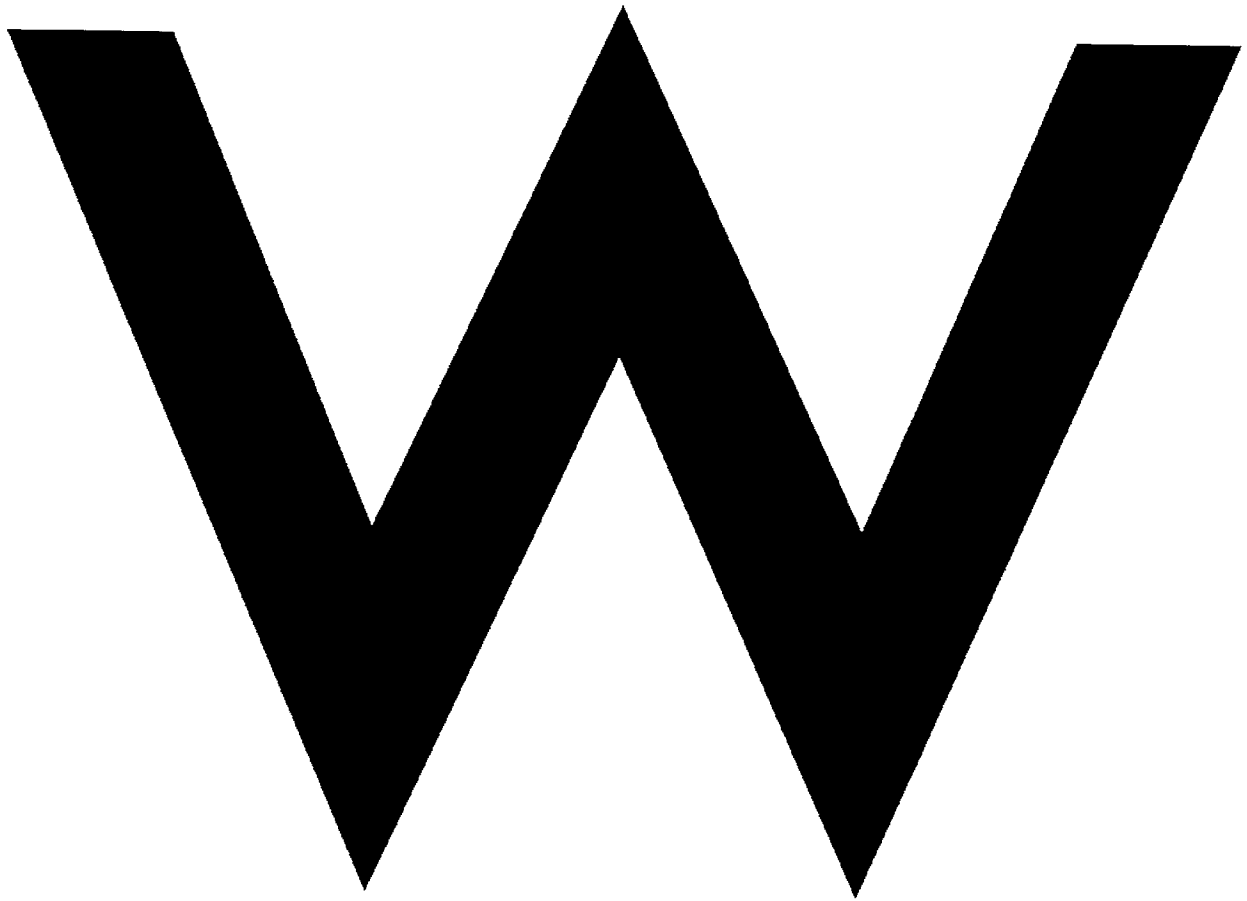
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HOTELS
WORLDWIDE



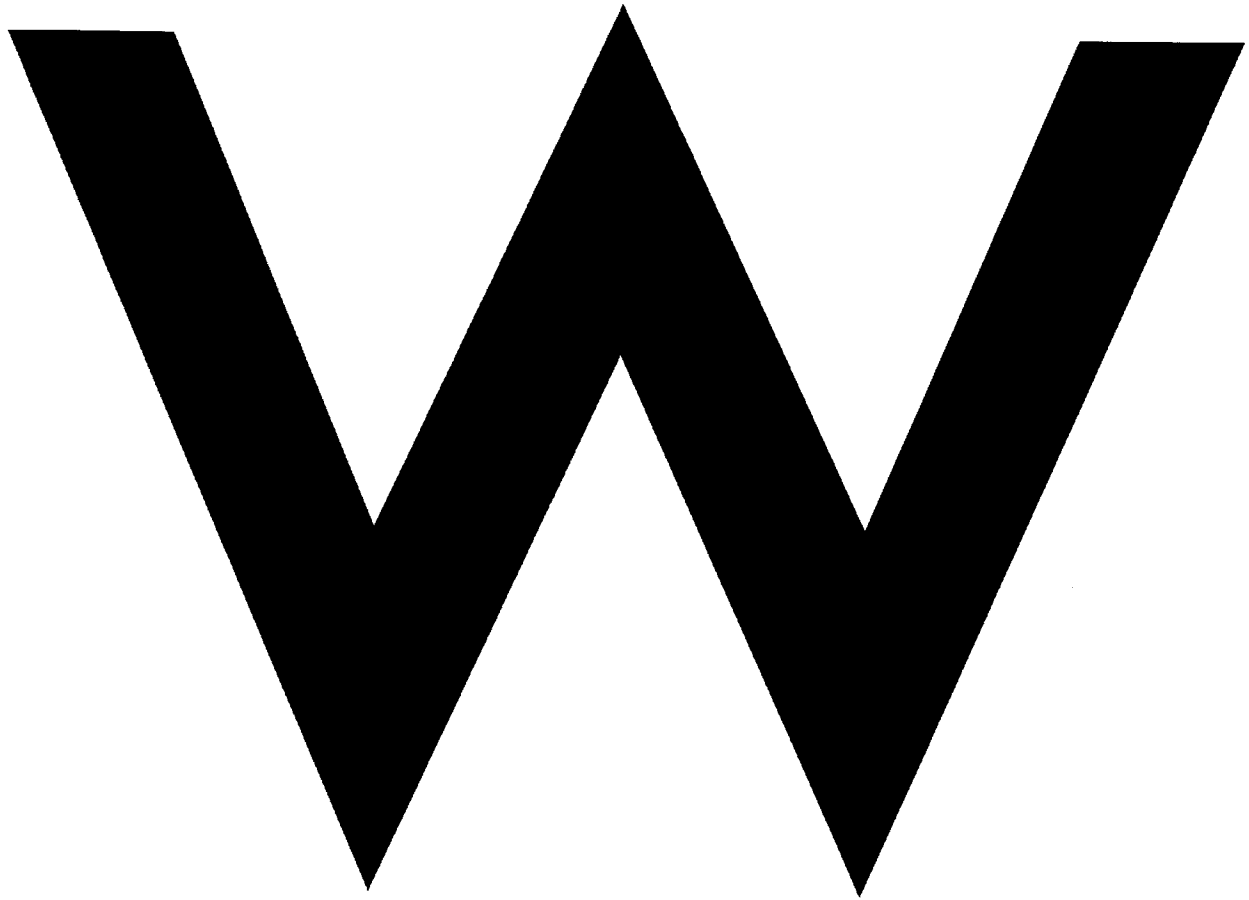
HOTELS

WORLDWIDE

A large, bold, black letter 'W' logo. The 'W' is composed of four thick, diagonal strokes that meet at sharp points, creating a symmetrical, zigzag shape. It is centered at the top of the page.

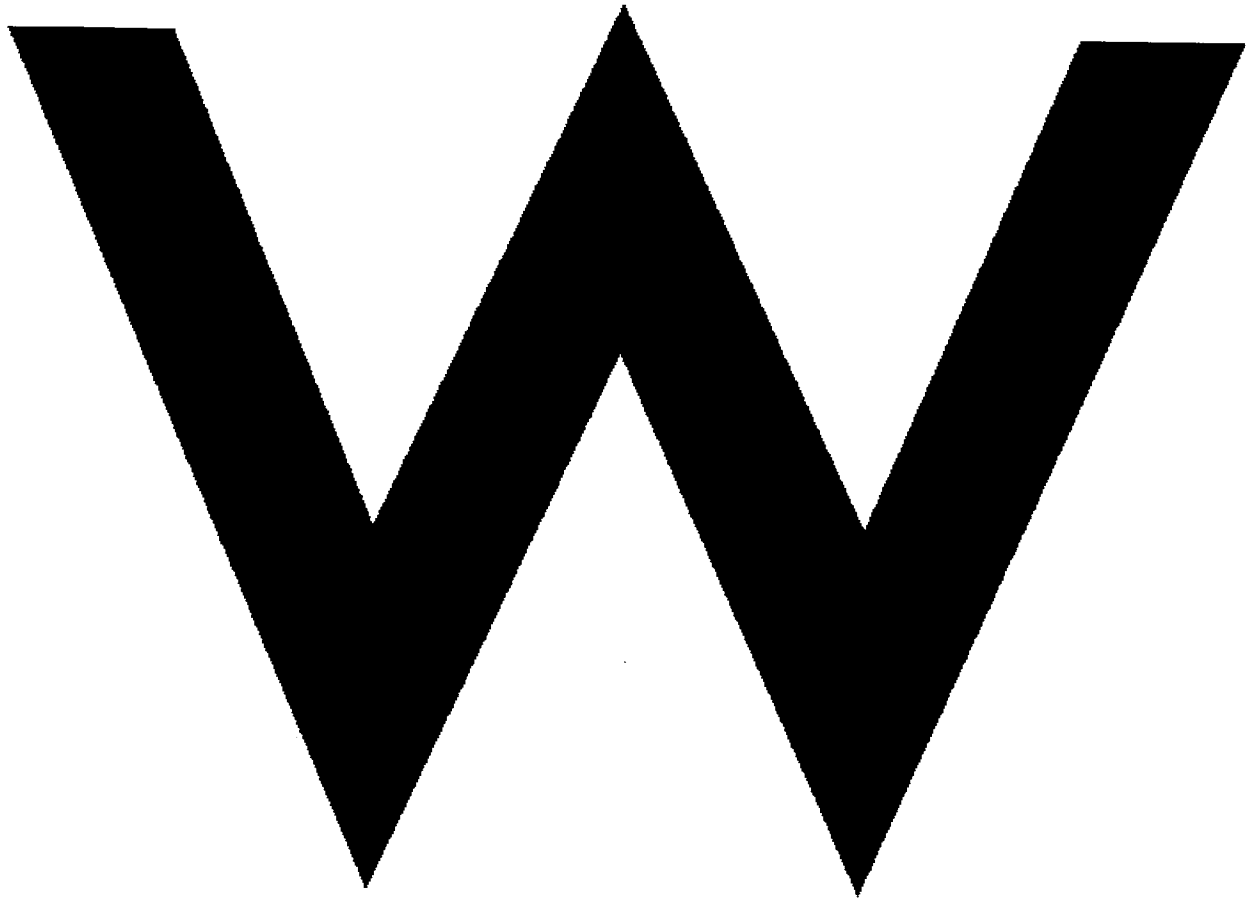
HOTELS

WORLDWIDE

A large, bold, black letter 'W' logo. The letter is composed of three distinct 'V' shapes joined together, with sharp points at the top and bottom. It is centered horizontally and occupies the upper half of the page.

HOTELS

WORLDWIDE

A large, bold, black letter 'W' logo. The 'W' is composed of four thick, diagonal strokes that meet at sharp points, creating a symmetrical, zigzag shape. It is centered at the top of the page.

HOTELS

WORLDWIDE